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Peter K. Wahl  
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January 27, 2014

**Via Facsimile (512) 322-8314 and Certified Mail**

Aileen M. Hooks  
Baker Botts L.L.P.  
98 San Jacinto Boulevard  
Suite 1500  
Austin, Texas 78701-4078

Re: Request for Property Access, Stewart Creek

Dear Ms. Hooks:

This firm represents Mr. Bert Fields with regard to his property at the southwest corner of Stonebrook Parkway and Legacy Drive in Frisco, Texas (the "Property"). We are in receipt of a December 20, 2103 "Request for Property Access" and the accompanying "Landowner Consent Form" from your client, Exide Technologies ("Exide").

Mr. Fields is receptive to granting Exide reasonable access to his property so that it may perform any further investigation required by the Texas Commission on Environmental Quality ("TCEQ") and U.S. Environmental Protection Agency ("EPA") in order to complete its Affected Property Assessment Report ("APAR"), as outlined in the TCEQ's and EPA's October 8, 2013 and November 19, 2013 comments to it and Exide's responses thereto.

Mr. Fields respectfully requests that such a grant of access be formalized by some means more satisfactory than the "Landowner Consent Form" proposed by Exide in its recent communication. Enclosed is a proposed access agreement, executed by Mr. Fields, that you will see is far more customary for these types of access arrangements. As you are likely aware, Texas law specifically provides that "reasonable access" being granted by an "innocent owner" such as Mr. Fields allows for the following:

- (1) that the designated person [being granted access] may not unreasonably interfere with the use of the property;
- (2) for payment of reasonable compensation for access to the property; and
- (3) that the owner or operator is indemnified from liability for an intentional or negligent act of the designated person arising from the person's access to and use of the property.

TEX. HEALTH & SAFETY CODE § 361.752(c).

The proposed access agreement allows for any visual inspection or sampling necessary for Exide to complete its APAR. If any remediation or other corrective action is ultimately required at the Property, we ask that access arrangements related to it be agreed-upon once the full extent of such work becomes known. Mr. Fields seeks to have his Property returned to its original condition after Exide performs any work at the Property. He expects that any work on the Property will be done in a good and workmanlike manner and in compliance with all legal requirements. He would like to be kept apprised of the status of any work on the Property and given access to all information related thereto. He also seeks indemnification for claims related to Exide's or its representatives' work and also inclusion as an additional insured on any insurance policies covering this work. It appears possible that slag, battery chips, or other wastes from Exide operations may be affecting the Property and Mr. Fields seeks to maintain any claims related thereto, including a tolling of any applicable limitations period. Mr. Fields is not seeking any form of "compensation" for access; however, he does seek to be reimbursed for his reasonable out-of-pocket expenses related to this matter.

Please be advised that Mr. Fields is in advanced negotiations with the City of Frisco for it to acquire Stewart Creek and its floodplain as it crosses the Property. As an accommodation to it and to facilitate such a transaction, we ask that the City be kept apprised of any developments regarding environmental issues related to the Property. To make any conveyance more efficient, the attached proposed access agreement also allows the City, at its option, to assume the rights and obligations of Mr. Fields should it become the owner of the Property while Exide still needs access to it.

We look forward to working with Exide in whatever manner necessary for it to complete its environmental investigation in Frisco. We will accommodate Exide's access to the Property as soon as possible after an executed access agreement is in place. Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Yours Sincerely,



Peter K. Wahl

PKW/aj  
Enclosure

cc: (via regular mail)  
Mr. Matthew A. Love, Exide  
Mr. Mack Borchardt, City of Frisco  
Mr. Kerry Russell, Russell & Rodriguez, L.L.P.  
Mr. Gary Beyer, TCEQ  
Mr. Paul James, EPA



## ACCESS AGREEMENT

This Access Agreement ("Agreement") is made and entered into by and between Mr. Bert Fields ("Mr. Fields") and Exide Technologies ("Exide") (collectively, the "Parties"). This Agreement shall be effective upon the date that both Parties have executed this Agreement, as evidenced by their respective signatures below ("Effective Date").

WHEREAS, Mr. Fields is the owner of an approximately 400-acre property at the southwest corner of Stonebrook Parkway and Legacy Drive in Frisco, Texas (the "Property");

WHEREAS, Exide is the owner and operator of a former battery recycling facility in the vicinity of the Property at 7471 5th Street in Frisco, Texas (the "Exide Property");

WHEREAS, Stewart Creek and a tributary thereof are waterways that flow in part from the Exide Property to the Property;

WHEREAS, Exide is performing work required by the Texas Commission on Environmental Quality ("TCEQ") (Agreed Order Docket No. 2011-1712-IHW-E) and U.S. Environmental Protection Agency ("EPA") (Administrative Order on Consent RCRA 06-2012-0966) in order to complete an Affected Property Assessment Report ("APAR") relating to releases of certain contaminants at and from the Exide Property;

WHEREAS, Exide submitted an APAR to TCEQ on July 9, 2013 and, in response thereto, TCEQ and EPA requested that Exide perform further investigation of portions of Stewart Creek downstream from the Exide Property, including the Property;

WHEREAS, Exide has requested access to the Property for the purpose of performing this further APAR work;

WHEREAS, Mr. Fields wishes to grant Exide and its representatives reasonable access to the Property for it to perform this further APAR work on the terms and conditions set forth in this Agreement;

WHEREFORE, for and in consideration of the mutual terms, covenants and conditions of this Agreement, the Parties agree as follows:

1. **Right of Entry.** Exide, its affiliates, employees, agents, consultants, contractors or other authorized representatives shall, as necessary, have the limited privilege to enter the Property, subject to the specific conditions of this Agreement, in order to conduct any visual inspection or sampling necessary for it to receive TCEQ and EPA approval of its APAR (the "Authorized Activity"). This Agreement is intended and shall be construed only as a temporary license to enter and work upon the Property and not as a grant of an easement or any other interest in the Property.

2. **Term.** The term of the access provided for under this Agreement shall commence on the Effective Date and continue until the date that is thirty (30) days after Exide receives final approval of the APAR as related to the Property, unless earlier terminated as provided for herein.



The Parties may at any time revise or extend the term by mutual written agreement. However, Mr. Fields retains the sole discretion to unilaterally terminate the right of entry provisions of this Agreement, as executed or amended at any time, in his sole and absolute discretion.

3. **Prior Notice of Access.** In scheduling activities on the Property prior to the desired entry onto the Property, Exide shall provide Mr. Fields with written notice seven (7) business days prior to the day of desired access to the Property. The notice shall include the following:

- A. the time and date of planned entry onto the Property and the identity of the contractors or other Exide representatives to enter the Property as well as the equipment they will be using;
- B. the purpose of the activity;
- C. a description of the activity;
- D. the number and type of any samples to be taken;
- E. the target compounds to be analyzed for, if any, including any constituents requested by any regulatory agency;
- F. the sample and analytical methods to be employed;
- G. the expected duration of the activity;
- H. the locations of the activity, including the proposed sampling or testing points or area; and
- I. all health and safety plans, measures and precautions to be taken.

4. **Right to Refuse Access.** Mr. Fields retains the sole discretion to refuse to allow any entry by Exide onto the Property or eject Exide from the Property, if such access to the Property exceeds the scope of the Authorized Activity or unreasonably interferes with Mr. Fields use or enjoyment of the Property.

5. **Safety and Standard of Care.** Exide represents, covenants and warrants that: (a) the activities conducted on its behalf shall be conducted in a safe and workmanlike manner during reasonable and normal working hours in a manner consistent with the generally accepted level of care and skill ordinarily exercised by professional engineers and contractors performing services of a similar nature and shall not unreasonably interfere with the activities conducted by Mr. Fields or others on the Property, (b) it shall take all necessary and prudent precautions to properly secure all sampling, drilling, testing and other work areas at all times and will limit the number of personnel on the Property to a number reasonably needed to perform the tasks to be carried out, (c) it shall take all actions and shall implement all protections necessary to ensure that actions taken under this Agreement, and that equipment, materials and substances generated or brought onto the Property, pose no threat to the safety or health of persons or the environment, and cause no injuries to persons or damage to property (real or personal) of Mr. Fields or of any other person, property, pipelines, or other structures on the Property, (d) it shall remove cuttings, well water, decontamination materials and other waste materials from the Property as soon as practicable (but no later than two days after generating the waste material or completion of the field task, as the case may be) and that such materials will be generated, owned and the responsibility of Exide, with any treatment, storage or disposal of such materials conducted in compliance with all applicable laws and regulations, (e) it agrees to keep any well capped and locked at all times when its personnel are not on site with frequent inspections to make sure the well is secure at all times, (f) all persons performing the activities authorized herein shall be appropriately trained, certified, permitted and/or licensed in accordance with all applicable laws



and regulations, including, but not limited to, those related to work around hazardous substances and electric power lines; and (g) Mr. Fields has the right to request Exide to replace its employees, consultants, agents, contractors, subcontractors and their employees who fail to conduct work in a safe and workmanlike manner.

6. **Compliance with Applicable Laws and Regulations.** Exide represents, covenants and warrants that it shall comply with all applicable federal, state, and local laws and regulations in undertaking the activities authorized by this Agreement as may be applicable to Exide or Mr. Fields, their parents, subsidiaries, predecessors, successors, affiliates, employees, agents, consultants, contractors and/or subcontractors.

7. **Insurance.** Exide represents, covenants and warrants that it and any contractor or other representative retained by or on behalf of Exide to perform work pursuant to this Agreement: (a) shall maintain appropriate liability insurance to cover liabilities that could occur in connection with activities to be performed pursuant to this Agreement of a type and amount reasonably available and acceptable to Mr. Fields, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate, (b) shall ensure that the insurance includes contractor liability coverage and pollution liability coverage insuring actions undertaken pursuant to this Agreement, (c) shall ensure that the applicable policies will also name Mr. Fields as an additional insured and waive all subrogation against Mr. Fields, (d) will provide appropriate documentation of this coverage and additional insured status prior to initiating further work on the Property, and (e) will ensure that the applicable policies shall not be canceled, materially changed or have coverage reduced without notice to Mr. Fields in accordance with the provisions of the policy.

8. **Property Restoration.** Upon completing the Authorized Work or upon termination of this Agreement, whichever occurs first, Exide shall promptly restore the Property from any changed conditions to at least as good a condition as it existed prior to Exide's environmental activities. Obligations under this section shall survive the termination of this Agreement and shall be effective regardless of when claims or liabilities are made or asserted. Compliance with the property restoration requirements of this section does not relieve Exide of obligations, if any, that may exist apart from this Agreement to remediate contamination or pay damages due to contamination.

9. **Data and Reports.** Exide shall provide to Mr. Fields all information and data obtained, generated or learned as a result of Exide's activities on the Property as soon as possible after it is generated and at least five days prior to any of its submission to TCEQ and/or EPA. Mr. Fields shall be permitted to have representatives present during all environmental activities on the Property, and Exide shall, upon Mr. Fields' request, provide split samples of any samples to be taken by Exide.

10. **Meetings, Conferences with Governmental Authorities.** Exide shall provide Mr. Fields with reasonable advance notice of meetings scheduled with any federal, state or local governmental authority (such as, but not limited to, the EPA or the TCEQ) which are reasonably expected to include discussion regarding the Property. Mr. Fields, or his representative(s), shall be entitled to attend and participate in any and all such meetings and will provide to Exide the identity of the representatives, if applicable, expected to attend in advance of the meeting(s).

11. **Indemnity.** Exide agrees to fully defend, protect, indemnify and hold Mr. Fields harmless from any and all claims, demands, losses, causes of action, liabilities, costs and



expenses (including, but not limited to, reasonable attorneys' fees and expenses), including but not limited to personal injuries, death, property damage, or contamination of or adverse effects on the environment, arising out of Exide or its employees, agents, representatives, contractors, subcontractors, or invitees' activities performed pursuant to this Agreement. This indemnity shall survive expiration or termination of this Agreement.

12. **Release.** Exide expressly acknowledges and agrees that Mr. Fields is merely providing access per Exide's request, for the sole and limited purposes set forth in this Agreement, and that Mr. Fields has made no representations to Exide in connection with any condition, contamination or substances that may exist on, near, about or under the Property. Exide expressly RELEASES Mr. Fields, his affiliates, employees, agents, successors and assigns, or other authorized representatives from and accepts all risks, known or unknown, of entering the Property, performing any work thereon, and that may be found to exist from any condition, contamination or substances on, near, about or under the Property. Furthermore, in performing the environmental activities authorized hereunder, Exide assumes the responsibility for identifying the presence and location of any and all pipelines, piping, conveyancing mechanisms, conduits, cables, tanks, tunnels, power lines or other installations or equipment whether above-ground or underground.

13. **Expenses.** Exide shall be solely responsible for payment of all costs and expenses in connection with the activities conducted by or on behalf of Exide pursuant to this Agreement. If wells or other fixtures or structures installed by Exide on the Property without prior approval by Mr. Fields interferes with Mr. Fields' use of the Property, such wells, fixtures or structures shall be removed or relocated upon the request by Mr. Fields at Exide's sole expense.

14. **Liens.** Exide shall keep the Property free and clear of any and all liens arising out of its investigation, testing, property restoration and any other activities performed by or on its behalf pursuant to this Agreement.

15. **Cost Reimbursement and Responsibility.** Exide shall reimburse Mr. Fields for all reasonable out-of-pocket costs and expenses incurred by Mr. Fields in connection with this Agreement and the past, present, and future environmental activities performed by Exide under the APAR or contemplated in this Agreement.

16. **Damage to Property.** Exide shall notify Mr. Fields of any damage to the Property or to any crops, equipment, personal property, buildings, structures, or other improvements to the Property (collectively, "Damaged Property") caused by, arising from, or in connection with the entry on or use of the Property or any activities undertaken thereon by Exide within 24 hours of such damage. Exide shall then promptly repair the Damaged Property at Exide's sole cost and expense. If the Damaged Property is beyond repair, Exide shall pay Mr. Fields for the Damaged Property at replacement cost.

17. **Encumbrances.** Exide shall not do any act that may encumber Mr. Fields' title to the Property. Exide shall promptly pay all third parties for work and labor performed and materials supplied for any activities on the Property made or contracted for by Exide.

18. **Tolling Provision.** Any and all statutes of limitation or defense of laches that may be applicable to causes of action against Exide, its parent, subsidiary, predecessor, successor and affiliated companies that have accrued or will accrue to Mr. Fields due to environmental



contamination at, on or under the Property caused by, originating or arising from activities on the Exide Property or due to any damages, injuries or losses caused by environmental activities or other acts or omissions by Exide, its predecessors, affiliates or their contractors or subcontractors are tolled for the period commencing on the Effective Date and ending on the date sixty (180) days after the termination of this Agreement. The Parties may renew or extend the tolling provisions of this Agreement at any time, although they are not bound to do so. The Parties agree that laches or any other defense based on delay on the ground that suit was not filed and service of process made during the foregoing tolling period shall not be asserted.

19. **No Admission/Waivers.** By entering into this Agreement, the Parties do not in any way admit or acknowledge liability for the presence of contamination on the Property or in connection with any other damages, injuries or losses that may have arisen out of prior environmental activities on the Property. Nor does entry into this Agreement create any responsibility for removal of contamination or other remediation; nor do any of the Parties waive, release or relinquish any of their rights, claims or defenses. Nothing in this Agreement shall be construed as consent or authorization by Mr. Fields for the presence of any contaminants on the Property.

20. **Notices.** Exide represents, covenants and warrants that it shall fully comply with all notice provisions herein. Except as otherwise specifically provided herein, all notices required or made under this Agreement shall be in writing and shall be made as follows:

To Mr. Fields:           Mr. Bert Fields  
                                  11835 Preston Road  
                                  Dallas, TX 75230-2708

With a copy to:       Peter K. Wahl  
                                  Jackson Walker L.L.P.  
                                  Bank of America Plaza  
                                  901 Main Street, Suite 6000  
                                  Dallas, TX 75202  
                                  Phone: 214.953.6101  
                                  Fax: 214.661.6611

To Exide:               Matthew A. Love  
                                  Exide Technologies  
                                  P.O. Box 14294  
                                  Reading, PA 19612-4294

With a copy to:       Aileen Hooks  
                                  98 San Jacinto Boulevard  
                                  Suite 1500 Austin, Texas 78701-4078  
                                  Phone: 512.322.2616  
                                  Fax: 512.322.8314

Either party may change the above designations by written notice to the other party.

21. **Parties Bound.** This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto, their heirs, successors and

assigns in interest. Neither party may assign the rights and obligations provided for herein without the prior written consent of the other party; provided, however, that Mr. Fields shall be entitled to assign this Agreement to any party to which the Property or any part thereof is sold, assigned or otherwise conveyed. In the event that Mr. Fields sells, assigns, or otherwise conveys the Property or any part thereof to a third party, that third party, in its sole and absolute discretion, may assume all of the rights and obligations of Mr. Fields described in this Agreement.

22. **Severability.** The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision. In the event any provision of this Agreement is held invalid or unenforceable, the Parties agree to interpret and apply the remainder of this Agreement in a manner so as to maintain its original intent in all material respects.

23. **Enforceability by Third Parties.** Subject to Section 21 of this Agreement, this Agreement is expressly not intended for the benefit of any third party and is expressly not enforceable by any third party.

24. **Entire Agreement.** This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings between the Parties relating to the subject matter of this Agreement.

25. **Modification.** This Agreement shall not be modified by oral agreements. All modifications to this Agreement must be in writing and executed by both parties.

26. **Waiver.** Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or of any other provision hereof. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement. No provision of this Agreement may be waived unless done so in writing and signed by the Parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

27. **Advice of Counsel.** Each party acknowledges and agrees that it has given mature and careful thought to this Agreement and that it has been given the opportunity to review this Agreement independently with legal counsel.

28. **No Reliance.** In signing this Agreement, no party has relied on or been induced to execute this Agreement by any statements, representations, agreements or promises, oral or written, made by any other party, any other party's agents, employees, servants or attorneys, or anyone else, other than the statements expressly written above in this Agreement.

29. **Interpretation.** In the event of a dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the party that drafted it.

30. **Authorized Representative.** The Parties represent, covenant and warrant that the following signatories to this Agreement are authorized to bind the Parties to the terms hereof.



31. **Counterparts.** This Agreement may be executed in counterparts and each will be considered an original and will have full force and effect notwithstanding that the signatures of all Parties to the Agreement do not appear on the same page.

32. **Governing Law and Venue.** This Agreement shall be subject to and governed by the laws of the State of Texas. The validity, enforceability, interpretation, and construction of this Agreement shall be governed by the laws of the state of Texas (without regard to conflict of law rules) and the laws of the United States applicable to transactions in Texas. Any lawsuit or proceeding arising out of or related to this Agreement shall be brought exclusively in the courts in Collin County, Texas.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals effective as of the date that this Agreement becomes fully signed and executed by both parties.



BERT FIELDS

Bert Fields, Jr.  
Printed Name: Bert Fields, Jr.

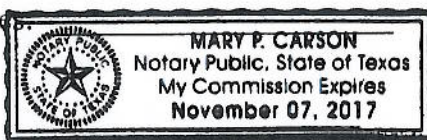
Date: 1-24-2014

The foregoing instrument was acknowledged before me, a Notary Public for the State of Texas, by BERT FIELDS, JR., this 24 day of Jan, 2014.

Mary P Carson  
Notary Public

My commission expires

(Notary Seal)





AUTHORIZED REPRESENTATIVE FOR EXIDE TECHNOLOGIES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The foregoing instrument was acknowledged before me, a Notary Public for the State of Texas, by \_\_\_\_\_ of Exide Technologies this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(Notary Seal)